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**REPORT OF THE ATTORNEY GENERAL TO THE GOVERNOR
AND THE LEGISLATURE PURSUANT TO GENERAL LAWS
CHAPTER 12, SECTION 11D, ON STATE AGENCY AND AUTHORITY
COMPLIANCE WITH THE ENVIRONMENTAL LAWS**

DECEMBER 1995



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December 12, 1995

**REPORT TO THE GOVERNOR AND THE LEGISLATURE ON
STATE AGENCY AND AUTHORITY COMPLIANCE WITH
THE ENVIRONMENTAL LAWS**

To His Excellency the Governor and the Honorable the General Court of the Commonwealth of Massachusetts:

Pursuant to my authority under G.L. ch. 12, § 11D, I respectfully submit this report on the progress of the "Clean State Initiative" to the Governor and the General Court. In my interim Clean State report of April 28, 1995, I reported that the administration was withholding environmental audit materials prepared by the consulting firm of Camp Dresser & McKee ("CDM") on the roughly 300 designated Clean State high priority matters. I am pleased to report that the CDM evaluations have now been provided to my office, and I can now submit this comprehensive examination of the Clean State program. The Clean State Initiative has been in operation long enough -- close to three years -- for me to be able to evaluate progress under it. I anticipate submitting periodic reports in the future, as implementation of Clean State proceeds.

Governor Weld promulgated Executive Order 350 in February, 1993 in response to my concern that state agencies and authorities comply with the laws that protect the public health and the environment. It is the only program of its kind in the country. The program assumes that governmental agencies are no less obligated than private entities to obey the environmental laws. In this area, I agree with Justice Brandeis that "[g]overnment is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example."

As we examined the range of environmental problems facing, and in many instances created by, the Commonwealth, the need to address the state's environmental violations in a comprehensive manner became abundantly clear. It was also evident that agencies and authorities had not made environmental protection a crucial part of their mission. Consistent with G.L. c. 12, § 11D, Executive Order 350 was the result of a cooperative effort between the Office of the Attorney General and the Governor. The Order envisioned that the Attorney General would oversee and monitor progress under the Clean State Initiative.

The Order directed each secretariat to identify, prioritize and expeditiously remedy environmental problems at state facilities. Approximately 1300 environmental matters were initially identified by the agencies and authorities. Some 330 were classified as "priority" matters because they presented a danger to the public health or the environment, were close to environmentally-sensitive areas, or were located in low income

neighborhoods, many of which bear a disproportionate share of environmental and health risks. The Clean State Council, created by the Executive Order and composed of a representative from each secretariat, set a deadline of July 1, 1997 for remediation of all priority matters. The Council requires all other Clean State violations to be corrected by the end of fiscal year 2000. These deadlines provide generous and fair amounts of time, four and seven years, respectively, for state agencies to bring their facilities into environmental compliance.

Serious problems of many years' duration will not be rectified overnight; however, I do expect state agencies and authorities to comply fully with Executive Order 350. Some agencies are not fulfilling their responsibilities under the Order. Other agencies are showing signs of real progress. Recent, encouraging figures provided by the Governor's Office identify funding sources to correct many of the most serious environmental problems. Problems which are unlikely to be addressed by the July 1, 1997 priority deadline have been referred to the Department of Environmental Protection for investigation and possible enforcement. Many agencies have recently hired environmental consultants to assist them in their Clean State matters.

Government has an obligation to move decisively to remedy its violations. Millions of dollars in public funds are being spent on resource protection; at the same time, the state is a

contributor to environmental degradation. Although substantial progress has been made in the areas of asbestos and underground storage tank removals, nearly three years after the promulgation of the Executive Order, many of the most serious and costly violations have yet to be remedied. Pollution of the air, water and wetlands by state facilities continues. Without immediate planning and the commitment of substantial resources, it will be impossible for many agencies to meet the Council's own deadline for the remediation of the priority matters.

This report examines "the state of Clean State": the progress made by the Commonwealth's agencies in identifying, assessing and remedying noncompliance with the environmental laws. It also recommends actions that I believe need to be taken in order for Clean State to succeed.

Identification of environmental problems

One problem underlying Clean State stems from the decision to delegate the initial identification of environmental problems to the agencies themselves. While this "self-assessment" approach provided some benefits, it is now clear that many agencies lacked the expertise to conduct the in-house environmental auditing required under the Executive Order and produced initial lists of environmental problems that were both over-inclusive and under-inclusive. Matters that are not in fact problems were listed, while other serious violations appear to have been overlooked.

The over-inclusion of matters on the Clean State list has been identified by the Department of Environmental Protection ("DEP") and, on occasion, by the agency originally reporting the matters. Both the Division of Fisheries and Wildlife and Environmental Law Enforcement and the Department of Environmental Management have requested that numerous sewage system violations be removed from the list because the systems are actually in good working order, and apparently were at the time they were initially listed. Similarly, the Metropolitan District Commission reported that it had erroneously described some sites as having underground storage tanks ("USTs") when in fact they had none. Other problems for which MDC had taken responsibility were on property not owned by the Commonwealth. A number of agencies appear to have listed all of their USTs as problems without first having conducted tightness testing of the tanks to determine if they were structurally sound. These mistaken identifications of problem areas have caused time-consuming and costly investigations by CDM. Close to 50% of the priority matters examined by CDM were not substantiated as actual problems. Such a high percentage of "non-problems" calls into question the validity of the initial identification process.

The agencies failed, at the same time, to identify all outstanding violations. Although many obvious violations were listed, a significant number of other less visible problems or potential violations were not. For instance, a July, 1994,

inspection of the Department of Public Health's State Laboratory Institute in Boston by DEP revealed that the laboratory was not in compliance with multiple hazardous waste and air quality regulations. None of these violations had been identified by the agency. A DEP inspection at Grafton State Hospital, a surplused property under the jurisdiction of the Division of Capital Planning and Operations ("DCPO"), revealed previously unlisted violations of industrial wastewater regulations at the heating plant due to unpermitted discharges from the boiler and floor drains to the ground. An inspection of Massachusetts Maritime Academy in Buzzards Bay by DEP in February, 1995 found unreported hazardous waste and industrial wastewater violations. Similarly, while investigating the Department of Correction's priority matters at M.C.I. Norfolk, CDM discovered that contaminated water from the power plant boilers was being discharged into an adjacent stream. This serious violation (CDM ranked this threat first among DOC's priority matters), had not been listed by DOC as a noncompliance issue in the initial identification process. CDM also recommended that Massachusetts Hospital School in Canton evaluate its over 80-year-old sewer system at the same time it made required improvements to the storm drain system. That evaluation revealed that major parts of the sewer system need to be replaced. After this office intervened following repeated raw sewage spills into Highland Lake in Norfolk, DOC pledged to conduct a comprehensive assessment of its sewer

line. The pipeline, which is a serious problem and needs repair or replacement, has now been added to the Clean State list.

This record indicates that, with some 5,000 buildings on 400,000 acres of land under the Commonwealth's stewardship, it is likely that many more environmental matters exist than have been designated to date. A number of facilities failed to identify any environmental problems during the cataloging of existing problems. For instance, the South Bay Incinerator Site in Roxbury, with asbestos, solid waste and soil and groundwater contamination issues, was added to the Clean State list after this office began investigating the site. The ostensible reason for its omission was that it was an "orphan" site for which no one Commonwealth agency accepted responsibility. According to the November, 1993, "Real Property Report" of the Commonwealth, there are 53 National Guard armories; however, not a single armory appears on the Clean State list. With potential UST and hazardous waste management issues, it is likely that at least some of these facilities are not in compliance with environmental laws.

DEP's inspections have uncovered numerous new matters to be added to the Clean State list. In the first four months of 1995, DEP identified 50 previously unreported problems. In the July, 1995, Clean State quarterly reports, DEP requested that agencies begin reporting on violations at 25 separate facilities. Although similar types of facilities, i.e.

hospitals, colleges and correctional facilities, generally share common environmental issues, agencies have not generally applied information gained from a DEP inspection of one facility to another similar facility within their purview. DEP has also found certain types of violations, including industrial wastewater and hazardous waste management violations, common to many facilities. There appears to be widespread ignorance among the agencies of hazardous waste regulations.

The initial identification of environmental issues required under the Executive Order was an ambitious undertaking and the resulting identification of roughly 1300 Clean State matters, an impressive beginning. However, it is likely that many facilities presently not on the Clean State list have environmental matters that require correction. Agencies and authorities need to inspect promptly all of their respective facilities and report their environmental violations on the Clean State list.

Additionally, I am concerned that authorities, such as Massport and Massachusetts Bay Transportation Authority ("MBTA"), which have almost exclusively reported on releases of hazardous substances and oil under G.L. c. 21E, have not identified all of their environmental problems. A concerted effort should be made to insure that the universe of Clean State matters has been identified. Ideally, agencies will develop their Clean State plans based on comprehensive

information, set priorities for remediation from that list, budget the necessary fiscal resources, and prevent future problems from developing at their facilities.

Quarterly Reporting on Clean State Matters

Accurate and complete reporting on each matter is critical to tracking what the agencies and authorities are doing to comply with the Clean State Order. The cooperation between the Offices of the Attorney General and the Governor embodied in Executive Order 350 necessarily requires that agencies report fully on their Clean State matters. This is not merely for my information: comprehensive reporting correlates closely with real progress in planning and taking corrective actions. The Clean State Council requires secretariats to report to the Governor and the Attorney General every 90 days on progress. These narrative reports, known as "quarterly reports," have now been submitted for eight quarters.

A number of agency practices have made it difficult to evaluate progress. Inconsistency in naming and describing matters has made it hard to discern which of multiple matters at a facility a report discusses. In the July, 1995 quarterly reports it was extremely difficult to determine on which of their numerous facilities MDC and Massachusetts Highway Department ("MHD") were reporting because many locations were listed as "unknown" and facility names were not included. While both MHD and MDC were reporting electronically for the first time in the July updates, this lack of identifying data

continued in their October, 1995 quarterly reports. In the past, many agencies have not used the standardized reporting form that was designed by DEP for quarterly reporting, which required detailed information about the problem and the steps being taken to correct it.

More importantly, quarterly reports have often failed to address many previously identified matters, and omitted critical information with respect to the matters they do address. For instance, MHD submitted site-specific reports for only four of its 58 priority matters in the January, 1995 updates; the rest of MHD's January reports were short summaries which focused only on USTs and hazardous waste issues, despite the fact that contaminated sites, wetlands, and solid waste issues make up the majority of MHD's priority matters. DEP noted in an April 4, 1995 memorandum that the four specific reports submitted by MHD in January failed to include important information.

Similarly, MDC, which at one time had 268 matters on the Clean State list, reported in October, 1994, only on cross connections, USTs and new matters that had been added to the list in July, 1994. It only began reporting on all its matters in July, 1995. Even those "reports" contained little information. There were no October, 1995 quarterly entries for a number of MDC matters. Despite a serious air violation involving its incinerator, University of Massachusetts Medical Center in Worcester did not report on the problem in the

quarterly updates until April, 1995, other than to say "working to resolve the air quality problems." These are not isolated examples.

The most serious obstacle to date preventing review and monitoring of progress under the Clean State Initiative is the lack of detail contained in many of the agencies' past quarterly reports. For example, University of Massachusetts at Dartmouth reported in January, 1995 that DCPO "ha[d] appointed designers to resolve some of its noncompliance issues" and that it was in the process of entering into design contracts. Lacking is any information about the matters for which designers have been hired, what they are designing, the costs of design or projected start and end dates for construction. Westboro State Hospital, a Department of Mental Health facility, which was recently cited by DEP for a number of hazardous waste management violations, reported in July, 1995, only that it "is in the process of implementing the actions demanded by DEP." In the October, 1995 quarterly reports, the Department of Environmental Management ("DEM") reports as to a number of its priority matters only that they "will be rectified by July 97." Facilities also need to report fully on the status of violations identified in notices of noncompliance ("NONs") received from DEP, administrative consent orders, and any other environmental enforcement actions brought against them.

A new compliance update form drafted by EOEa was used by many agencies for the first time in the April and July, 1995 quarterly reports. This form, which calls for information about actions taken to date, scope of work necessary, estimated cost to correct and start date, is a significant improvement to the quarterly reports. However, this information is not being systematically included in the Clean State electronic reporting system developed by CDM, which is being phased in. Additionally, there is very little background information or detail about the actual problem contained in the computer reporting database. Electronic reporting may improve the overall quality of the reporting; however, this is necessarily dependent on the quality of the information the agencies enter in the database.

The agencies have also been slow to incorporate the detailed information gained by CDM about the priority matters into their quarterly reports. DEP, Clean State's technical advisor, in commenting on the expected quality of reporting of agencies that received CDM action plans, notes that agencies' reports should now "be comprehensive, providing enough information so that DEP can monitor the reasonable efforts being made by the agencies to abate the problem . . . and resolve it before the prescribed July 1, 1997 deadline." April 4, 1995 Memorandum to Secretary Coxe from Thomas Powers, DEP Acting Commissioner. According to DEP, quarterly reports should include a summary of the CDM information in the form of

an action plan, with a schedule for activities, a cost estimate and funding information. Even DCPO, which has submitted by far the most thorough quarterly updates and which has hired a number of consultants for its priority matters, still needs to detail the work that will be done at each priority site, including the estimated time to complete each stage of the action plans and the total time necessary to complete remediation; provide funding information; assess what human population, if any, is at risk; determine what permits are needed for present and future use of the site; and attempt to incorporate pollution prevention measures in the design of the remedy.

Financial Commitment

It has been difficult to make an accurate assessment of the agencies' commitment to remediating Clean State matters without knowing the cost of addressing the state's environmental problems and the funding available. Until recently, there has been little concrete financial data available on the Clean State Initiative.

It is not possible to track past Clean State spending with any degree of precision under the state's MMARS computerized accounting system. The system contains only general spending codes such as "infrastructure maintenance and improvements" and "hazardous waste removal services." Subsets of these general categories that are strictly related to environmental remediation cannot be produced. This lack of detail makes it

impossible to match funding with a particular project and measure progress by it. Fiscal Year 1995 figures on Clean State spending are not available in a centralized, useful format at this time.

Under DCPO's contract with CDM for review of priority matters, the consulting firm developed rough "order of magnitude" cost estimates for the substantiated priority matters. Cost figures provided by the Governor's Office in August, 1995, estimate that it will cost close to \$38.7 million to achieve compliance for the confirmed priority matters by the end of FY 97. These figures are necessarily tentative and, for G.L. c. 21E matters, include only study costs and not the costs of actual remedy construction or implementation. It is estimated that an additional \$26.8 million will be needed to maintain compliance and complete remediation of the priority matters after FY 97. Funding sources for these post FY 97 costs will need to be developed. There are no reliable cost figures for the non-priority matters at this time.

A&F has been working with the agencies to match existing capital authorizations with priority matters. Recent figures are encouraging. According to the "Priority Matter Funding Plan," of the roughly \$38.7 million required to achieve compliance by July 1, 1997, \$30.6 million in existing funds have been identified for this purpose. An additional \$7.9 million was being sought in bond bills pending before the Legislature. DCPO has reportedly identified existing monies to

fund fully all of its priority matters. DEM has also identified existing funding to correct nearly all of its most serious matters. Other Executive Offices, such as Education and Public Safety, are more dependent on the passage of bond authorizations. The Higher Education Bond Bill, which was recently enacted, provides authorizations for capital improvements including "asbestos abatement, hazardous waste remediation and repairs and improvements to power plants." It also provides specific funding to bring Cape Cod Community College's sewage system into compliance with Title 5 of the Environmental Code. The figures provided for the Executive Office of Transportation and Construction ("EOTC") by the Governor's Office were disappointing. As of August, 1995, MHD had reportedly identified funding for only eight of its 55 priority matters.

While A&F predicts that spending on Clean State matters using existing authorizations will be substantial, a pivotal question remains: How will agencies be compelled to expend funds on Clean State remediation when the funds are not narrowly earmarked for that purpose? Identification of existing funding for Clean State matters within broader spending categories such as "infrastructure," cannot guarantee that the monies will be spent on Clean State remediation. Similarly, while agencies have also been instructed that problems costing less than \$50,000 to correct are expected to come out of the agency's operating budget, no mechanism is in

to place to insure that agencies actually expend such funds on Clean State. This is crucial to the success of Clean State since many non-priority matters fall into this category.

Clean State Progress

There were 1303 matters on the original Clean State list in 1993. As of April, 1995, there were 1323. This is because a number of new matters have been added to the list. While 185 matters had been removed from the list by July, 1995, well over that number have been added. According to combined figures of DEP and EOE, 90, or 50%, of the 185 matters were removed because they were listed in error (i.e., duplicates or no actual problem). Similarly, of the 105 matters delisted in October, 1995, some 49 were duplicates or were erroneously listed as problems in the first instance. Of the matters that have been resolved, the majority have involved asbestos and UST removals accomplished under DCPO contracts. Smaller inexpensive matters such as developing the proper procedure for the disposal of oily rags at M.C.I. Norfolk (4 listings) and hazardous waste management have also been accomplished. While it makes sense that agencies would address their simpler, less expensive problems and those for which DCPO had contracts, first, attention must now focus on the more serious and costly violations. Substantial effort will be necessary to insure that the priority matters are addressed by the end of FY 1997 and that the nonpriority matters are well on the way toward correction.

I want to emphasize that significant projects have been accomplished under the Clean State Initiative at state facilities. M.C.I. Concord has upgraded its wastewater treatment plant and no longer discharges effluent into the Assabet River. Western Massachusetts Hospital and M.C.I. Lancaster are both in the design stage to tie their wastewater systems into municipal sewer systems. The State Laboratory Institute, which had a serious and dangerous problem with the on-site storage of hazardous ethanol waste, now has the waste hauled off-site. The University of Massachusetts at Amherst has modified its boilers to meet air emission standards. MWRA has stopped discharges of oil from its pump station into Spot Pond Brook. Massport has filed a number of response action outcome statements with DEP for sites involving the release of hazardous substances and oil under G.L. c. 21E at Logan Airport. DEM has made substantial progress in bringing numerous septic systems throughout the state into compliance through repair and replacement. These successes demonstrate how much can be accomplished through a real commitment to comply with Executive Order 350.

On the planning side, a number of agencies have recently hired environmental consultants to address Clean State problems. DCPO has entered into contracts with six environmental firms. One of its consultants is in the process of preparing bid specifications for UST removal at a number of priority sites. The Department of Public Health now has an

environmental consultant, who will assist the Department in assessing and solving a large number of its matters, and a number of agencies have hired licensed site professionals to address their G.L. c. 21E problems. EOEA has also hired a Clean State Coordinator to work with the agencies and oversee Clean State implementation.

However, only a handful of high priority problems have actually been remedied to date. Using the environmental hazard ranking system developed by CDM, which is based on relative threat posed, with the exception of a drinking water supply problem at Wompatuck State Park in Hingham, which according to DEM has been corrected, a problem with runoff from a coal pile at the University of Massachusetts at Amherst and four USTs at Springfield Technical Community College, the top three Clean State priority matters at each secretariat have yet to be fixed. Between April and October, 1995 some agencies, such as DCPO, began taking significant and tangible steps toward remediating their priority matters. Other agencies, however, appear to be making little progress. DOC still reports as to its three most serious (according to CDM) problems -- discharges of contaminated water into wetlands from boilers at M.C.I. Norfolk's power plant; an old dump that is causing contamination, also at M.C.I. Norfolk; and unlawful discharges of effluent from the sewage system at M.C.I. Plymouth -- that no money has been spent to correct the violations, and gives no estimate of the time needed to come into compliance and no

estimated start dates. M.C.I. Plymouth has, however, reduced its inmate population and imposed water restrictions in order to prevent further violations. MDC reported in July, 1995, as to its three CDM top-ranked environmental problems -- an UST involving a release of fuel oil to an adjacent stream in Saugus, storm drain and sewer discharges into a marine cove from its maintenance garage in Nantasket, and overflows of wastewater from the sewage system near the summit of Blue Hill in Milton -- that no actions to correct the problems had been taken. In October, 1995, MDC filed no reports on the discharges in Nantasket and Blue Hill; as to the UST in Saugus, MDC reported that it is "being put into new contracts that are now being developed."

Without substantial and immediate action by the agencies, it will be impossible for many facilities to comply with the July 1, 1997 deadline for correction of priority Clean State matters. According to EOEa, some facilities, including Holyoke Soldiers Home (air emissions at power plant) and Blue Hills Reservation (solid waste dump) cannot meet the July 1, 1997 priority compliance deadline, even if they were to start today.

The four years from Clean's State inception in 1993, to the end of FY 97, is ample time in which to expect that the Commonwealth's most serious environmental problems will be corrected. I am concerned that some significant violations are continuing with no specific plans and timetables for

remediation. Executive Order 350 directed the agencies to prioritize and recommend a solution for each compliance matter, including cost estimates, possible funding sources, anticipated time of completion and interim solutions, if necessary. At this juncture, agencies should be sufficiently along in the remedial process to be able to provide a detailed schedule for each step necessary to bring their priority problems into compliance.

I am sensitive to the fiscal constraints under which Commonwealth agencies are operating and do not expect that matters of many years duration will be remediated overnight. But these constraints were well known when Executive Order 350 was drafted and will not justify a failure by the Commonwealth to live up to its obligations under the Clean State Initiative.

There are a number of steps that the agencies can take in the short run to prevent new matters from occurring and existing matters from growing worse. Additionally, there are matters for which the lack of funding is not a valid excuse. Virtually every agency and authority that DEP has inspected has had previously unreported hazardous waste management violations. The agencies may lack either information about how to handle hazardous waste or the will to apply that knowledge. Many hazardous waste violations are not expensive to fix. CDM estimated that Tewksbury Hospital, Mt. Wachusett Community College and Western Massachusetts Hospital, for example, could

develop hazardous waste management plans in four weeks at a cost to each of \$1000-\$2000. The remediation of hazardous waste violations -- labelling of wastes, signage in storage areas, registration for appropriate generator status, impervious surfaces in accumulations areas, and sound storage containers -- are not expensive measures. Correction of these violations, which greatly reduces threats to public safety from fire or explosion, should be prompt.

Even where facilities have been provided with information regarding hazardous waste violations, they have been slow to correct the problems. For instance, Massachusetts Correctional Industries, a division of DOC that is located at M.C.I. Norfolk, was cited by DEP in 1993 for a number of hazardous waste violations. A reinspection by DEP in 1994 found continuing and new hazardous waste violations in the areas under Industries' control.

Framingham State College has reported on soil contamination caused by spills during oil deliveries. To prevent new spills and future G.L. c. 21E problems, the facility must develop a written unloading procedure and provide a loading pad or spill catch pan that will contain any oil spills. Similarly, tightness testing of non-compliant USTs should be conducted at all facilities to determine if leakage is occurring. If a tank fails tightness testing, it should be drained immediately. A number of facilities lack vapor collection and control systems on their fuel dispensing equipment in violation of state air

pollution regulations. Installing the required vapor recovery devices is relatively inexpensive and these violations should be promptly remedied.

Some agencies appear not to understand that the longer environmental violations continue, the greater the cost of remediation may be. For instance, Worcester State Hospital, despite visible evidence that fuel storage tanks were leaking through a wall, did not respond in a timely manner to DEP's request that it submit a plan for an immediate response action ("IRA"). Only after this office began investigating the matter, did the hospital submit the IRA. Poorly operating boilers should be tuned or serviced to improve efficiency until replacement is budgeted. A number of agencies have reported that transformers may contain polychlorinated biphenyls ("PCBs"). Their status should be promptly investigated and the transformers retrofitted or replaced.

Conclusions and Recommendations

Executive Order 350 arose out of the need to address environmental problems at Commonwealth facilities in a comprehensive manner. As the initial identification of over 1300 Clean State matters showed, ongoing environmental violations were prevalent at facilities owned and operated by our agencies and authorities. Clearly, government needed to get its house in order. The Executive Order provided the framework for state facilities to come into compliance. This office agreed to monitor the Clean State Initiative and to work

cooperatively as long as real progress was made in correcting state environmental problems. Depending on the complexity of the problem, facilities should have a reasonable period of time to correct the violation -- but not an indefinite period.

Some agencies and authorities have taken the mandate of the Clean State Initiative to heart and, I am pleased to report, have made real advances in addressing their outstanding problems. Others appear to be less committed to the goals of Clean State and have shown little progress. While unquestionably agencies are operating under fiscal constraints and face difficult decisions about resource allocation, Clean State requires that agencies and authorities plan and act now to achieve compliance and to stop ongoing pollution. There are a number of relatively inexpensive measures that agencies can and should adopt now that will alleviate or prevent future environmental violations. Such steps may result in significant cost savings in the long run.

All state facilities must continue to investigate, identify and report their environmental violations. DEP's inspections have graphically demonstrated that many environmental problems have gone unreported. Several thousand facilities have never reported under Clean State and the agencies and authorities must make certain that those operations have been thoroughly scrutinized for possible violations. Accurate and complete quarterly reporting on all Clean State matters is necessary in order to enable this office to assess progress. In the past,

poor reporting has correlated with little action. Facilities should also report on funding, including estimated costs, available existing appropriations, additional funding sought, and amounts expended to date. By this time, agencies and authorities also should be able to report on total past Clean State expenditures broken down by project and to provide future annual spending projections matched to specific projects.

The Clean State Initiative can succeed but it will require a concerted effort over the next several years to remedy the most serious and costly state violations. The agencies and authorities have an obligation to the citizens of the Commonwealth to lead the way by complying with laws that protect our natural resources. I hereby submit the following recommendations:

1. Environmental awareness and compliance must become part of each secretariat's and authority's mission. This can only be accomplished if those in charge view environmental responsibility as an integral part of their mandate. The commitment to remediation of environmental problems, pollution prevention and resource conservation at state facilities must ultimately come from those in policy-making positions. In promulgating Executive Order 350, the Governor has clearly evinced his commitment to governmental environmental compliance; however, the administration must continue to convey that sense of urgent mission to top level agency and authority managers.

2. The agencies and authorities should develop the necessary infrastructure to ensure that environmental compliance is part of each agency's responsibilities. Environmental compliance must become part of the daily job of each facility. This requires the designation of a specific person or unit within each facility to be responsible for compliance issues on a daily basis. Protocols and clear lines of communication must be established for emergency situations, routine inspections, remediation, record keeping and permitting. Systems should also be developed to prevent problems from recurring.

3. There is a widespread need for environmental training and education at state facilities. Staff are in need of training in hazardous waste management and, in many cases, in wastewater and air pollution problems as well. While EOEa has committed to conducting workshops on pollution prevention, including recycling, indoor air quality and toxics use reduction, training sessions could also be held on environmental compliance issues. Additionally, training should be conducted for designated facility officers and managers on the environmental requirements for particular state operations, i.e., hospitals, fueling operations, drinking water suppliers, chemical users, garages, and maintenance shops. Training will enable facilities to recognize existing environmental problems and to prevent the occurrence of new ones.

4. Using information gained both from prior DEP inspections and training, and with the assistance of DEP and environmental consultants, the agencies and authorities should conduct comprehensive environmental auditing at all of their facilities, including leased facilities, Commonwealth office buildings, courthouses and the State House. All potential sources of environmental violations should be inspected. If no environmental problems are found at a facility, the agency should submit a report to that effect to EOEa and this office. This secondary examination is necessary to insure that all existing environmental violations have been identified.

5. Checklists of potential environmental problems should be developed for use by the several thousand state-owned buildings and facilities that have not to-date identified any environmental problems.

6. Environmental problems within each facility and within each agency should be prioritized and a master plan for remediation created. Each master plan should include accurate cost estimates for correcting each problem, funding information, both as to funding identified and sought, specific compliance steps and timeframes for achieving those steps, start dates and estimated completion dates. Such a master plan will focus the agencies on compliance planning; it may also result in substantial savings by enabling the agencies to coordinate and utilize contractor services for similar tasks on different projects.

7. Even with extremely limited funding, a number of steps can be taken to prevent new matters from occurring and existing matters from worsening. Hazardous waste management and spill containment and contingency plans should be adopted. Hazardous waste "housekeeping" violations, such as labelling, registration and storage, can be corrected inexpensively. Tightness testing, which is relatively inexpensive, should be conducted of USTs that are not in compliance with regulations to determine if leaks are occurring; those that fail should be immediately drained. When warranted, immediate response actions should be taken promptly to contain and prevent further damage from releases of oil and hazardous materials into the environment. Potentially hazardous conditions, such as PCB leakage in transformers, should be expeditiously investigated. Routine maintenance that can both identify and alleviate problems until ultimately resolved should be conducted.

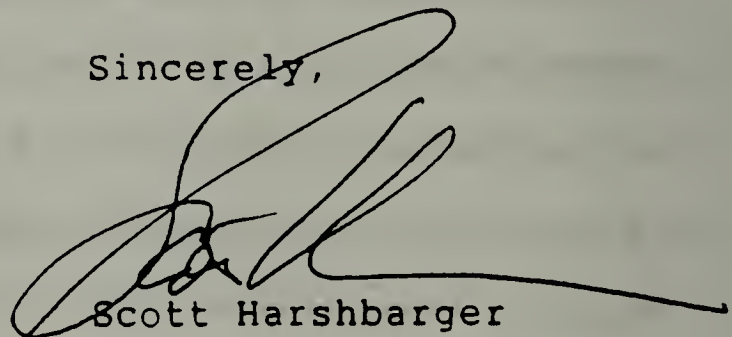
8. A&F should adopt and implement internal enforcement mechanisms, such as encumbering agency accounts or holding back monies from allotment, to make certain that agencies are expending identified operating and capital funds on Clean State problems where appropriate.

9. While recent reports have shown some improvement over prior submissions, there continues to be a need for accurate and complete quarterly reporting. Agencies and authorities must make a concerted effort to insure that matters within their jurisdictions are reported upon fully and

comprehensively. Information gained as a result of the CDM inspections of the priority matters should be incorporated into these quarterly reports.

10. Realistic funding estimates for remedying both the priority and nonpriority Clean State matters ought to be developed. Agencies should provide concrete financial data in a useful format, including identified funding sources and past expenditures on each problem. An overall Clean State accounting system that is capable of tracking past Clean State expenditures from this point forward should be established.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Harshbarger', with a long horizontal flourish extending to the right.

Scott Harshbarger

